IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.549 OF 2006

Kiritkumar Ramanlal Shah .. Petitioner.

V/s.

Union of India & Others .. Respondents.

Ms.Sonal Gokhale i/b. M/s.Akshar Laws for the petitioner.

Mr.A.S. Rao for the respondents.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 10TH MARCH, 2006.

P.C. :

Heard Ms.Sonal Gokhale, the learned counsel for the petitioner.

2. The learned counsel submits that the impugned order directing the petitioner to deposit 10% of the amount of penalty as condition precedent for entertaining the appeal is a non-speaking order and, therefore, liable to be set aside and the matter deserves to be remitted back to the Appellate Tribunal for Foreign Exchange.

3. Section 19 of the Foreign Exchange Management Act, 1999 to the extent it is relevant for our purpose reads thus :

> "19. Appeal to Appellate Tribunal. - (1) Save as provided in sub-section (1), the Central Government or any person aggrieved by an order made by an Adjudicating Authority, other than those referred to in sub-section (1) of Section 17, or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal :
>
> Provided that any person appealing against the order of the Adjudicating Authority or the Special Director (Appeals) levying any penalty, shall while filing the appeal, deposit the amount of such penalty with such authority as may be notified by the Central Government :
>
> Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realization of penalty.
>
> (2) ----------
> (3) ----------
> (4) ----------
> (5) ----------
> (6) ----------"

4. It would, thus, be seen that any person aggrieved by an order made by the Adjudicating authority or the Special Director (Appeals), other than those referred to in sub-section (1) of section 19, may prefer an appeal to the Appellate Tribunal for Foreign Exchange. The party preferring the appeal against the order by the Adjudicating Authority of the Special Director (Appeals) is required to deposit the amount of such penalty so levied with the notified party. However, the

Appellate Tribunal is empowered to dispense with such deposit of penalty if it is satisfied that the deposit of such penalty would cause undue hardship to the person appealed against the order. While dispensing with such deposit, the Appellate Tribunal is competent to impose such conditions as may be necessary to safeguard realization of penalty.

5. If the appellant felt that deposit of the penalty would cause undue hardship to him, he ought to have appeared before the Tribunal and satisfy the Tribunal about undue hardship. The fact of the matter is that neither the appellant appeared personally nor arranged his appearance through the authorised officer. In these circumstances, ordinarily, there was no question of dispensation of pre-deposit. However, the Tribunal showed mercy in applying the order that it passed in the connected Appeal No.229 of 1990 in the matter of Pravinkumar Kothari and, accordingly, directed the appellant to deposit only 10% of the penalty as condition precedent for entertaining the appeal. The impugned order rather shows the mercy extended by the Tribunal to the appellant despite his non appearance and despite his not showing any ground of undue hardship.

6. The writ petition has no merit and is

dismissed in limine.

7. By way of indulgence in the peculiar facts and circumstances of the case, we extend the time of pre-deposit for a further period of two months from today.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)